

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
UNITED STATES OF AMERICA

-against-

AMAURY LOPEZ, JR.,

Defendant.  
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10-cr-798-PAC-1

16-cv-3342-PAC

**ORDER**

Amaury Lopez, Jr. ("Movant") is currently incarcerated at United States Penitentiary Lewisburg. He brings this *pro se* motion, under 28 U.S.C. § 2255, seeking to challenge his conviction and sentence. The Court transfers this action to the United States Court of Appeals for the Second Circuit for the reason set forth below.

The Court's records show that Movant has filed a previous motion for relief under § 2255 challenging the same conviction and sentence. *See Lopez v. United States*, No. 10-cr-798 (PAC), 2017 WL 1424328, at \*1 (S.D.N.Y. Apr. 20, 2017), *aff'd*, 792 F. App'x 32 (2d Cir. 2019). Because Movant's previous motion under § 2255 was decided on the merits, this application is a second or successive motion. *See Corrao v. United States*, 152 F.3d 188, 191 (2d Cir. 1998).

Before a second or successive § 2255 motion is filed in the district court, authorization from the appropriate court of appeals is required. *See* 28 U.S.C. § 2244(b)(3)(A). Movant must therefore move in the United States Court of Appeals for the Second Circuit for permission to pursue this application.<sup>1</sup>

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<sup>1</sup> Movant must demonstrate that a motion to the Court of Appeals is based on newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court. *See* 28 U.S.C. § 2255(h); *Mata v. United States*, 969 F.3d 91, 93 (2d Cir. 2020).

### CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Movant. In the interest of justice, the Court transfers this motion under § 2255 to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *see also Liriano v. United States*, 95 F.3d 119, 122–23 (2d Cir. 1996) (*per curiam*). This order supersedes the provision of Rule 83.1 of the Local Rules for the Southern District of New York that requires a seven-day delay before the Clerk of Court may effectuate the transfer of the case to the transferee court. This order closes this case. If the Court of Appeals authorizes Movant to proceed in this matter, he shall move to reopen this case under this civil docket number.

As the motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

Dated: New York, New York  
February 22, 2022

SO ORDERED



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HONORABLE PAUL A. CROTTY  
United States District Judge